

# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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<http://www.blm.gov/nv>

**SEP 13 2017**

In Reply Refer To:  
3100 (NV922)

CERTIFIED MAIL 9171 9690 0935 0111 9269 44

### DECISION

The Wilderness Society : Protest of Parcels in the  
Nada Culver, Director and Senior Counsel : September 12, 2017  
1660 Wynkoop Street, #850 : Competitive Oil and Gas Lease Sale  
Denver, CO 80202 :

### Protest Dismissed Parcels Offered For Sale

On July 24, 2017, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest<sup>1</sup> from The Wilderness Society (TWS). TWS protested all three (3) of the parcels offered in the September 12, 2017 Competitive Oil and Gas Lease Sale (the Sale) and the Battle Mountain District Office's (BMDO) Oil and Gas Lease Sale Determination of NEPA Adequacy (DNA): DOI-BLM-B020-2017-0036-DNA, and the June Oil and Gas Lease Sale Environmental Assessment (June EA) it tiers to: DOI-BLM-NV-B020-2017-0002-EA.<sup>2</sup>

### BACKGROUND

The nominated parcels included land in Federal mineral estate located in the BLM Nevada's BMDO. After the NVSO completed preliminary adjudication<sup>3</sup> of the nominated parcels, the NVSO screened each parcel to determine compliance with national and state BLM policies, including BLM's efforts related to the management of Greater Sage Grouse on public lands.

<sup>1</sup> The protest is posted on the BLM website, located at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

<sup>2</sup> The DNA and EA available at: <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada>

<sup>3</sup> Preliminary adjudication is the first stage of analysis of nominated lands conducted by the State Office to prepare preliminary sale parcels for Field Office review. During preliminary adjudication, the State Office confirms availability of nominated lands for leasing pursuant to 40 U.S.C. § 181 *et seq.*, 43 CFR 3100 *et seq.*, and BLM policies. Once the State Office completes preliminary adjudication, it consolidates the nominated land available for leasing into a preliminary parcel list to send to the Field Office for NEPA analysis and leasing recommendations.

The DNA tiered to the June EA and the existing Land Use Plan (LUP)<sup>4</sup>, in accordance with the Code of Federal Regulations (CFR) at 40 CFR 1502.20:

*Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review . . . the subsequent . . . environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.*

The BLM described its purpose and need for the action in the June EA as follows:

### ***1.2 Purpose and Need for Action***

*Oil and gas leasing is necessary to provide oil and gas companies with new areas to explore and potentially develop. Leasing is authorized under the Mineral Leasing Act of 1920, as amended and modified by subsequent legislation, and regulations found at 43 CFR part 3100. Oil and gas leasing is recognized as an acceptable use of the public lands under FLPMA. BLM authority for leasing public mineral estate for the development of energy resources, including oil and gas, is described in 43 CFR 3160.0-3.*

*Offering parcels for competitive oil and gas leasing provides for the orderly development of fluid mineral resources under BLM's jurisdiction in a manner consistent with multiple use management and consideration for the natural and cultural resources that may be present. This requires that adequate provisions are included with the leases to protect public health and safety and assure full compliance with the spirit and objectives of NEPA and other federal environmental laws and regulations. This action is being initiated to facilitate Battle Mountain District's implementation of the requirements in Executive Order (EO) 13212 (2001) and the National Energy Policy Act (2005).*

*The BLM is required by law to consider leasing of areas that have been nominated for lease if leasing is in conformance with the applicable BLM land use plan, in this case the Tonopah RMP (Tonopah Field Office), approved in 1997, or the Shoshone-Eureka RMP (Mt. Lewis Field Office), approved in 1986. The oil and gas parcels addressed in this EA cannot be considered for leasing without supplemental analysis of new information and changes in environmental conditions since these RMPs were approved, such as increased growth, locations of special status species, identification of traditional cultural properties, and recognition of other sensitive resources that were not addressed in the RMPs.*

The DNA stated in the NEPA Adequacy Criteria that:

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<sup>4</sup> The Tonopah RMP, approved on October 6, 1997, as amended.

*The proposed oil and gas lease parcels are included in the acreage previously analyzed and designated as open for fluid minerals leasing (subject to restrictions in some areas) in the Tonopah RMP. They are very near/adjacent to one of the parcels (# 106) specifically considered in DOI-BLM-NV-B020-2017-0002-EA, have geographic and resource conditions that are sufficiently similar, and would be subject to the same stipulations and lease notices attached to that parcel. Applications for exploration and/or development at specific sites would be subject to additional project-specific, site-specific environmental analysis before ground-disturbing actions would be approved.*

The final June EA considered four (4) alternatives:

- The “Proposed Action” alternative, which included offering all 106 nominated parcels with stipulations from the existing RMP that were sent to the BMDO for review as well as one reinstatement.
- The “Partial Deferral Alternative”, which considered offering 58 parcels or portions of parcels consisting of 91,064 acres, while deferring the remaining approximately 104,668 acres pending and RMP update which would develop and apply additional stipulations.
- The “Additional Resource Protection Alternative”, which was developed in response to public and agency comments received on the Draft EA, and considered offering all 106 adjudicated parcels, but with additional resource protection measures including stipulations to mitigate potential resource conflicts with exploration and development; and
- The “No Action” alternative, which considered rejecting all parcels nominated for the lease sale in June 2017. This alternative is included as a baseline for assessing and comparing potential impacts.

On June 22, 2017, the NVSO published a *Notice of Competitive Oil and Gas Internet Lease Sale for September 12, 2017*<sup>5</sup> (Notice), resulting in a total of three (3) parcels offered for lease. This protest challenges the DNA and all 3 parcels described in the Notice.

## **ISSUES**

TWS’s protest generally alleges that the BLM failed to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.*

The following addresses TWS’s protest related to the Sale. The BLM has reviewed TWS’s protest in its entirety; the substantive protests are numbered and provided in bold with BLM responses following.

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<sup>5</sup> The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

## **I. Legal Directives Governing Determinations of NEPA Adequacy Require Adequate Underlying NEPA.**

### **BLM Response:**

As TWS has stated the use of DNAs is governed by Department Manuals, the BLM NEPA Handbook, and BLM IMs. The key requirement to use of a DNA is adequate existing NEPA, because a DNA “does not itself provide NEPA analysis.”

In preparing the DNA for the September Lease Sale, the BLM reviewed the existing Tonopah RMP and FEIS, and the June EA. The Tonopah RMP and FEIS analyzed the potential impacts of oil and gas leasing, exploration and development in the Tonopah Resource Area. The June EA contained site-specific analysis of the proposed parcels for the June Lease Sale, including analysis of resources and potential impacts in the areas of the nominated parcels.

Therefore the DNA does have adequate underlying NEPA, and the above TWS’s allegation above has been considered, found to be without merit and is dismissed.

## **II. The Tonopah Resource Management Plan Does Not Provide an Adequate Environmental Analysis in Support of the Determination of NEPA Adequacy**

### **BLM Response:**

The Tonopah Resource Management Plan (RMP) and FEIS proposed and analyzed a Reasonably Foreseeable Development scenario (RFD) for Oil and Gas exploration and development. The RFD was based on known and potential oil and gas resources, and historic development in Nevada. The RFD was used to analyze potential impacts to other resources in the Resource Management Plan, and to make land use planning allocations and develop stipulations to prevent or reduce resource conflicts. Since neither the level of development in the RFD or the impacts analyzed in the FEIS have been exceeded, the RFD remains a valid analysis tool for ongoing oil and gas exploration and development.

The area of the 3 nominated parcels was analyzed in the FEIS and in the RMP was allocated as open to oil and gas leasing with stipulations, the proposed action is in conformance with the RMP. Additionally the area of the parcels was visited by the ID-Team and reviewed for consistency with the RMP decisions and analyzed in the June EA, and revisited in May to confirm that no new resource conditions existed on the 3 nominated parcels for the September sale that would require additional analysis.

Therefore, the above TWS’s protest has been considered, found to be without merit and is dismissed.

## **III. The Environmental Assessment Prepared for the June 2017 Lease Sale Also Does Not Provide an Adequate Environmental Analysis in Support of the Determination of NEPA Adequacy for the September 2017 Lease Sale**

### **1. Different impact area**

#### **BLM Response:**

The impact area of the 3 parcels nominated for the September Sale, are in Railroad Valley, an area of historic and ongoing oil and gas exploration, and as such analyzed in the Tonopah FEIS and RMP. In addition the 3 nominated parcels are in the same area as (in fact adjacent to) a parcel that was analyzed in the June EA.

Therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

### **2. Presence of Railroad Valley tui chub**

#### **BLM Response:**

The Railroad Valley tui chub was considered in both the June EA when it was determined to be “more than 2 miles from the parcel”, and the September Sale DNA. The nominated parcels were visited by an Interdisciplinary Parcel Review team and all wildlife, habitat, hydrologic and other relevant resource concerns were considered during the visit and parcel review. No presence of Railroad Valley tui chub, or tui chub habitat was identified on the 3 parcels.

Therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

### **3. Increased level of environmental impacts**

#### **BLM Response:**

The Partial Deferral Alternative was not selected in the June EA, as the selected Additional Resource Protection Alternative offered a similar level of protection of resources while being more consistent with the Tonopah RMP land allocation decisions and the BLM’s Multiple Use Mission.

Therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

### **4. Increased likelihood of development**

#### **BLM Response:**

The Reasonably Foreseeable Development scenario for oil and gas (RFD) as proposed and analyzed in the Tonopah FEIS and June EA, has yet to be exceeded despite 20 years of exploration and development since the FEIS and RMP were signed. The Railroad Valley area is one of the areas of known oil and gas production in Nevada, however the entire State of Nevada

is considered a wildcat area with few known fields, and development of any specific parcel is speculative.

Therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

#### **IV. A New Finding of No Significant Impact Must Be Issued Before the Protested Lease Parcels can be Sold**

##### **BLM Response:**

A Finding of No Significant Impact was issued with the June EA, and a new Decision Record including a review of the June EA & FONSI and incorporating the new parcels and DNA will be signed before the nominated lease parcels will be issued.

Therefore, the above TWS protest has been considered, found to be without merit, and is dismissed.

#### **V. There Must be a Public Comment Period for this Determination of NEPA Adequacy**

##### **BLM Response:**

The DNA was made public on the BLM's ePlanning website for a two-week Public Comment period from June 7 to June 21, 2017. As no comments were received on the DNA or proposed action the DNA was finalized and a Sale Notice was posted on the BLM website for the required 30 Protest Period.

Therefore, the above TWS protest has been considered, found to be without merit and is dismissed.

#### **VI. The BLM's Owes the Public an Explanation for the Validity of Using Determinations of NEPA Adequacy for Oil and Gas Lease Sales**

##### **BLM Response:**

The use of a DNA to satisfy that existing NEPA is sufficient for a proposed action is covered by the NEPA regulations, and the BLM NEPA Handbook, and the Oil and Gas Leasing Reform IM which states that *"the DNA process will only be appropriate in cases where the existing NEPA documentation has adequately incorporated the most current program-specific guidance."* The June EA provided site-specific analysis using current program-specific guidance of the area of the nominated parcels which was confirmed by additional table-top review and field visits to the parcels by the ID-Team. The use of a DNA for this action is in accordance with the BLM Handbook on use of DNAs, NEPA efficiency guidelines, and program specific guidance.

Therefore, the above TWS allegation has been considered, found to be without merit and is dismissed.

## **DECISION**

To the extent that TWS has raised any allegations not specifically discussed herein, they have been considered and are found to be without merit. For this reason, and for those previously discussed, TWS's protest of the Sale and the DNA is dismissed and all 3 parcels will be offered for sale on September 12, 2017.

## **APPEAL INFORMATION**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (enclosed). If an appeal is taken, a notice of appeal and/or request for stay must be filed in writing, on paper, in this office, either by mail or personal delivery within 30 days after the date of service. Notices of appeal and/or request for stay that are electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as timely filed. The notice of appeal is considered filed as of the date our office receives the hard copy and places our BLM date stamp on the document.


If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate office of the Solicitor (*see* 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

### **Standards for Obtaining a Stay**

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions regarding this decision, please contact Brian Amme, Deputy State Director, Minerals Division, at (775) 861-6585.

  
For Marci L. Todd  
Marci L. Todd  
Acting State Director

**Enclosure:**

1- Form 1842-1

**cc (electronic):**

WO310 (W. Svejnoha)  
NVB0000 (D. Furtado)  
NVB0200 (T. Coward)  
NV0920 (B. Amme)  
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**bcc:** Erica Niebauer, Office of the Solicitor, Pacific Southwest Region,  
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Lease Sale Book March 2017  
Reading File: NV-922